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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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July 16, 1997

By Hand

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

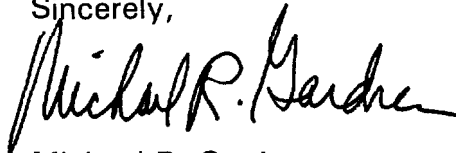
Re: Reply of CellularVision USA, Inc. to Opposition of
Zip Communications Corporation to CVUS Petition
for Partial Reconsideration
CC Docket No. 92-297

Dear Mr. Caton:

On behalf of CellularVision USA, Inc. ("CVUS"), and pursuant to Section 1.429(g) of the Commission's Rules, enclosed please find an original and eleven (11) copies of its Reply to Opposition of Zip Communications Corporation to CVUS Petition for Partial Reconsideration in the above-referenced proceeding.

Please direct any questions regarding this matter to the undersigned.

Sincerely,



Michael R. Gardner
Counsel for CVUS

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Rulemaking to Amend Parts 1, 2, 21)	
and 25 of the Commission's Rules to)	CC Docket No. 92-297
Redesignate the 27.5-29.5 GHz)	
Frequency Band, to Reallocate the)	
29.5-30.0 GHz Frequency Band, to)	
Establish Rules and Policies for Local)	
Multipoint Distribution Service and for)	
Fixed Satellite Services)	

**REPLY OF CELLULARVISION USA, INC. TO OPPOSITION OF ZIP
COMMUNICATIONS CORPORATION TO CVUS PETITION FOR PARTIAL
RECONSIDERATION**

CellularVision USA, Inc.¹ ("CVUS") by its attorneys, pursuant to Section 1.429(g) of the Commission's Rules (47 C.F.R. §1.429(g)), hereby files its Reply to Zip Communications Corporation's ("Zip") Opposition to CellularVision's Petition for Partial Reconsideration² in the above-referenced LMDS Rulemaking Proceeding.³

¹ CellularVision USA, Inc. is publicly traded on the NASDAQ National Market under the symbol "CVUS."

² *Opposition and Comments of Zip Communications Corporation on Petitions For Reconsideration ("Zip Opposition")*, CC Docket No. 92-297 (filed July 2, 1997).

³ *See Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, CC Docket No. 92-297, released March 13, 1997 ("LMDS Second Report & Order").

I. To Ensure Meaningful Small Business Participation in LMDS Auctions, The Commission Should Adopt CVUS' Installment Payment Plan

Contrary to Zip's assertion that adoption of a more realistic installment payment plan would result in speculative bidding, CVUS reiterates that in order to ensure meaningful small business participation in the LMDS auctions, the Commission should adopt CVUS' proposed installment payment plan as detailed fully in its *Petition for Partial Reconsideration*.⁴ Specifically, the Commission should allow a qualifying small business to pay for its license (less the 25% bidding credit and 20% down payment) under a *deferred incremental repayment plan*, with accrued interest payments at the 10-year T-note rate commencing in year six and incremental principal payments during years 7-10 of 5%/10%/10%/75%, respectively.

This installment payment plan proposed by CVUS would leave the small business LMDS licensee with adequate capital to meet what the Commission (and industry) expects will be the high start-up costs associated with LMDS.⁵ Moreover, deferring payments until year six would allow the small business LMDS licensee to establish a positive cash flow which could then be reinvested into continued system deployment, marketing, and operations while attracting additional investment, rather than servicing initial debt. Clearly, the promptest and most aggressive LMDS build-out not only advances Congress' and the Commission's goal of promoting competition

⁴ See *CVUS Petition for Partial Reconsideration*, CC Docket No. 92-297 (filed May 29, 1997).

⁵ *Third Notice of Proposed Rulemaking and Supplemental Tentative Decision*, 11 FCC Rcd 53, ¶ 188 (1995).

for entrenched cable and telco providers, but it also guarantees that LMDS small business licensees will be financially viable and thus be able to ultimately meet their financial obligations to the FCC.

II. CVUS' Installment Payment Plan Will Not Lead to Speculation

Zip argues that adoption of CVUS' proposal "would create a clear incentive for bidders to engage in speculation."⁶ Zip would have the Commission believe that if CVUS' proposal is adopted, entrepreneurial companies would "distort" the value of LMDS licenses by knowingly submitting bids "based on the expectation that the FCC will forgive their debt obligations."⁷

As an initial matter, in contrast with the Commission's former lottery system, the distribution of licenses through the auction process virtually eliminates the possibility of speculation. In fact, eliminating speculation in the award of FCC licenses was one of the primary reasons that Congress granted the FCC auction authority.⁸ Moreover, the Commission has adopted various important safeguards to further guarantee that only serious and financially qualified bidders participate in the auction process and that licensees will be capable of promptly providing service to

⁶ *Zip Opposition*, p. 3.

⁷ *Id.*

⁸ See H.R. Rep. No. 111, 103d Cong., 1st Sess., p. 248 (1993) "[l]otteries engendered rampant speculation, undermined the integrity of the FCC's licensing process and, more importantly, frequently resulted in unqualified persons winning an FCC license.").

the public.

For example, with regard to LMDS auctions, the Commission will require that all auction participants furnish an up-front payment, the underlying purpose of which is to “deter insincere and speculative bidding and to ensure that bidders have the financial capability to build out their systems.”⁹ Also, the Commission will require a uniform 20% down payment for all bidders to “discourage insincere bidding and increase the likelihood that licenses are awarded to parties who are best able to serve the public.”¹⁰ Importantly, as the Commission further stated, “a 20 percent down payment should also provide us with strong assurance against default and sufficient funds to cover default payments in the unlikely event of default.”¹¹ Finally, to further discourage speculation, the Commission adopted strict bid withdrawal, default, and disqualification payments that impose significant monetary penalties on LMDS bidders by recouping the difference between the defaulting entities’ winning bids and the re-auctioned license price, plus additional punitive payments.¹² Moreover, where gross misconduct, misrepresentation or bad faith is found, the FCC may declare the licensee ineligible to bid in future auctions and institute proceedings to revoke any existing

⁹ See *LMDS Second Report and Order*, ¶ 353.

¹⁰ *Id.*, ¶ 354.

¹¹ *Id.*

¹² See *id.*, ¶ 334 (adopting the Commission’s bid withdrawal, default and disqualification penalties in 47 C.F.R. §§1.2104(g), 1.2109).

licenses held by the applicant.¹³

Additionally, Zip's assertion that adopting CVUS's proposal would "eliminat[e] the immediate material financial obligations"¹⁴ is erroneous. As discussed above, the Commission's 20% down payment requirement can hardly be considered immaterial to an entrepreneurial small business. Moreover, the costs associated with system build-out and operation are certainly *material* to a small business.

Finally, Zip's reference to the PCS C-Block debt restructuring proceeding only serves to cloud the real issue at hand — maximizing small business participation in LMDS auctions. To date, no action has been taken in the ongoing C-Block proceeding that would, as Zip contends, set "precedent" to give LMDS licensees "the expectation that the FCC will forgive their debt obligations."¹⁵ Rather, as noted in its *Petition for Partial Reconsideration*, CVUS believes that the real lesson to be learned from PCS is that the FCC should provide small business licensees greater flexibility in making its license payments. Unlike the PCS "entrepreneurs block" auction where the vast majority of successful bidders were small businesses, LMDS auctions are open to bidders of unlimited financial size. Thus, adoption of a more flexible installment payment program, as suggested by CVUS, is even more important as these incentives will be required to ensure that small businesses can succeed in bidding against large

¹³ *LMDS Second Report and Order*, ¶ 336.

¹⁴ *Zip Opposition*, p. 3.

¹⁵ *Id.*

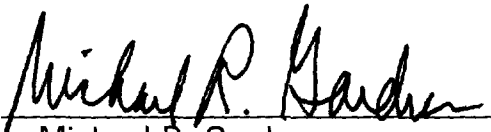
corporate entities. CVUS' *deferred incremental repayment plan* also allows the government to remain whole since the interest accrues from day one of the license term. Likewise, CVUS' plan provides greater assurance that the debt will be paid in full, while the Commission's twin goals of competition and consumer choice are simultaneously advanced.

III. Conclusion

To maximize small business participation in the FCC's nationwide licensing of LMDS while minimizing the risk of default for small business LMDS licensees, CVUS urges the Commission to reject Zip's opposition and adopt CVUS' proposal in its *Petition for Partial Reconsideration* to permit a more flexible installment payment plan as outlined above.

Respectfully submitted,

CellularVision USA, Inc.

By: 
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July 16, 1997

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Certificate of Service

I, Michael C. Gerdes, hereby certify that copies of the foregoing, "Reply of CellularVision USA, Inc. to Opposition of Zip Communications Corporation to CVUS Petition for Partial Reconsideration" were delivered by hand, on July 16, 1997, to the following:

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*By First Class U.S. Mail, Postage Prepaid